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AN ACT

RELATING TO EDUCATION; ENACTING THE BRAILLE ACCESS ACT; REQUIRING
INSTRUCTIONAL MATERIALS TO BE PROVIDED IN BRAILLE; PROVIDING A PRIVATE
RIGHT OF ACTION; REPEALING THE BRAILLE LITERACY ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Braille Access Act".

Section 2. PURPOSES.--The purposes of the Braille Access Act are to:

- A. enhance literacy;
- B. increase braille proficiency;
- C. improve employability for blind and visually impaired students; and
- D. reduce the cost of acquiring braille and other alternate accessible

format materials.

Section 3. DEFINITIONS.--As used in the Braille Access Act:

- A. "alternate accessible format" means one of several alternatives to
traditional print, including braille, large print and computer text files;
- B. "braille" means the tactile system of reading and writing used by
persons who are blind and visually impaired, as defined by the braille authority of
North America;
- C. "department" means the state department of public education;
- D. "educational institution" means a public school or public post-
secondary educational institution;
- E. "instructional materials" means textbooks, workbooks, teacher
manuals or editions, blackline masters, transparencies, test packets, software, CD-
ROMs, videotapes and cassette tapes;
- F. "structural integrity" means all of the printed instructional materials,
including the text of the material, sidebars, table of contents, chapter headings and
subheadings, footnotes, indexes, glossaries and bibliographies. "Structural integrity"

1 need not include nontextual elements such as pictures, illustrations, graphs or charts,
2 though the publisher should include a brief textual description of any such nontextual
3 element when it is practical to do so and mention of the nontextual element when a
4 description is not practical;

5 G. "student" means a blind or visually handicapped person accepted,
6 enrolled or attending an educational institution; and

7 H. "textbook" means a book, a system of instructional materials or a
8 combination of a book and supplementary instructional material that conveys
9 information to the student or otherwise contributes to the learning process, including
10 electronic textbooks.

11 Section 4. INSTRUCTIONAL MATERIALS.--

12 A. A publisher that prints instructional materials for students attending
13 educational institutions shall provide, upon request of the educational institution, any
14 printed instructional materials in an electronic format mutually agreed upon by the
15 publisher and the educational institution.

16 B. The formats used shall include any nationally recognized standard
17 for conversion of publishing files to braille, such as DAISY/NISO XML.

18 C. If no nationally recognized standard is appropriate, as determined
19 by the department, publishers shall provide the file in another mutually agreed upon
20 computer or electronic format, such as Microsoft Word, ASCII text or LaTeX.

21 D. The educational institution may use the electronic version of printed
22 instructional materials that is provided pursuant to the Braille Access Act to transcribe
23 or arrange for the transcription of the printed instructional materials into an alternate
24 accessible format. The educational institution has the right to provide the alternate
25 accessible format copy of the printed instructional materials to students as permitted
by federal copyright law, including the provisions of Section 316 of Public Law
104-197.

E. The electronic version of the printed instructional materials shall:

- (1) comply with any applicable federal standard;

1 (2) otherwise maintain the structural integrity of the printed SB
2 instructional materials; and
3 (3) include the latest corrections and revisions of the printed 3
4 instructional materials as necessary. 0
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5 F. The publisher shall provide the electronic versions of the printed Pa
6 instructional materials to the educational institution at no additional cost and within ten ge
7 business days after receipt of a written request that does all of the following: 3

8 (1) certifies that the educational institution or the student has
9 purchased the printed instructional materials for use by the student;

10 (2) certifies that the student is unable to use printed
11 instructional materials;

12 (3) certifies that the printed instructional materials are for use
13 by the student in connection with a course at the educational institution; and

14 (4) is signed by the:

15 (a) person responsible for providing educational
16 services pursuant to the federal Individuals with Disabilities Education Act;

17 (b) coordinator of services for students with disabilities
18 at the educational institution;

19 (c) person responsible for monitoring the educational
20 institution's compliance with the federal Americans with Disabilities Act of 1990 or
21 Section 504 of the federal Rehabilitation Act of 1973; or

22 (d) vocational rehabilitation counselor responsible for
23 providing services under an individualized plan for employment created pursuant to
24 the federal Rehabilitation Act of 1973.

25 G. A publisher may require that the request include a statement
signed by the educational institution agreeing that:

(1) the electronic copy of the printed instructional materials will
be used solely for the student's educational purposes; and

(2) the student or educational institution will not copy, publish

1 or in any other way distribute the printed instructional materials for use by anyone
2 other than the original student, except that the educational institution may provide the
3 instructional materials to another qualifying student who has signed a statement
4 agreeing to the terms contained in this section and unless it is otherwise permitted by
5 federal law.

6 H. A publisher who manufactures instructional materials using any type
7 of video or audio format, CD ROM or other digital format for students attending
8 educational institutions shall, to the maximum extent practicable, upon request, provide
9 an accessible version of the instructional materials or, if an accessible version is not
10 available, provide other electronic versions of the instructional materials, subject to the
11 same conditions and limitations for printed instructional materials.

12 I. Nothing in the Braille Access Act shall be deemed to authorize any
13 use of instructional materials that would constitute an infringement of copyright
14 pursuant to applicable federal copyright law.

15 Section 5. GUIDELINES.--The department, in consultation with representatives
16 from educational institutions and publishers, shall adopt guidelines consistent with the
17 Braille Access Act for the implementation and administration of that act. The
18 guidelines shall address all of the following:

19 A. the designation of instructional materials deemed required or
20 essential to student success;

21 B. definitions clarifying what constitutes nontextual mathematics or
22 science instructional materials that use mathematical notations and clarifying a
23 publisher's obligations in regard to such instructional materials;

24 C. definitions clarifying what is required to maintain structural integrity
25 and requirements for textual descriptions of pictures, illustrations, graphs and charts;

D. requirements for approval and procurement of textbooks that are
available in a computer or electronic format and procedures for suspension of
publishers from the procurement process if the publisher fails to comply with the
provisions of the Braille Access Act;

1 E. an administrative complaint process to be followed for complaints
2 against a publisher; S
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3 F. definitions clarifying what constitutes "educational purposes"; and 3
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4 G. any other matters the department deems necessary or appropriate 1
5 to carry out the purposes of the Braille Access Act. P
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6 Section 6. PRIVATE RIGHT OF ACTION.--A student who contends that there 9
7 has been a violation of the Braille Access Act has the right to pursue a private right of 5
8 action in the district court if the student has exhausted the administrative complaint
9 process. Organizations representing the interests of persons who are blind or who
10 have other disabilities shall have standing to assert any right afforded in the Braille
11 Access Act and shall be subject to the same requirements and terms as a student.
12 Should the student or organization prevail in a lawsuit, the student or organization
13 shall be entitled to injunctive relief and reasonable attorney fees and costs. No other
14 type of monetary damages shall be available.

15 Section 7. REPEAL.--Sections 22-15-21 through 22-15-25 NMSA 1978 (being
16 Laws 1993, Chapter 156, Sections 1 through 5) are repealed.

17 Section 8. EFFECTIVE DATE.--The effective date of the provisions of this act
18 is July 1, 2003.
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